

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PETER AND STEPHANIE NEWSON,

Plaintiffs,

vs.

COUNTRYWIDE HOME LOANS, INC.
DBA AMERICA'S WHOLESALE LENDER,
MORTGAGE ELECTRONIC
REGISTRATIONS SYSTEMS, INC.,
BANKERS ALLIANCE INC., JULIE
WHITESIDE, and DOES 1-20, inclusive,

Defendants.

Case No: C 09-5288 SBA

**ORDER STRIKING DEFENDANT
WHITESIDE'S MOTION TO
DISMISS**

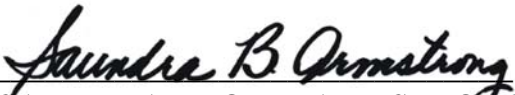
On December 18, 2012, the Clerk entered the default of Defendant Julie Whiteside ("Whiteside"). Dkt. 120. On the same day Plaintiffs filed a motion for default judgment against Whiteside (as well as Defendant Bankers Alliance) which the Court has since referred to Magistrate Judge Nandor Vadas for a report and recommendation. Dkt. 121, 122.

On January 15, 2013, Whiteside filed a pro se motion to dismiss for improper service, pursuant to Federal Rule of Civil Procedure 12(b)(5). Dkt. 124. The entry of default cuts off a defendant's right to appear in an action. *Schwarzer, Tashima & Wagstaffe, Fed. Civ. P. Before Trial*, § 6:42 at 6-9 (TRG 2012) (citing *Clifton v. Tomb*, 21 F.2d 893, 897 (4th Cir. 1927)). Thus, Whiteside's motion to dismiss is improper. Whiteside's remedy is to file a motion to set aside the entry of default, pursuant to Federal Rule of Civil Procedure 55(c). *See Great Am. Ins. Co. v. M.J. Menefee Constr., Inc.*, No. CV F 06-0392 AWI DLB, 2006 WL 2522408 (E.D. Cal. Aug. 29, 2006). Accordingly,

1 IT IS HEREBY ORDERED THAT Whiteside's motion to dismiss shall be
2 STRICKEN from the record. The Clerk shall strike Docket 124 and 125.

3 IT IS SO ORDERED.

4 Dated: January 16, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 PETER AND STEPHANIE NEWSOM et al,

5 Plaintiff,

6 v.

7 COUNTRYWIDE HOME LOANS INC et al,

8 Defendant.
9 _____/

10 Case Number: CV09-05288 SBA

11 **CERTIFICATE OF SERVICE**

12
13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on January 17, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
18 located in the Clerk's office.

19
20 Julie Whiteside
21 1212 Sterns Drive
22 Los Angeles, CA 90035

23 Dated: January 17, 2013

24 Richard W. Wieking, Clerk

25 By: Lisa Clark, Deputy Clerk
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27
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